

**Indiana Housing Finance Authority**  
**Section 42 Qualified Contract Provisions & Policies**

When submitting information to the Indiana Housing Finance Authority concerning a Qualified Contract the following Section 42 Qualified Contract Provisions & Policies (“Policies”) must be addressed. As used herein, any capitalized term shall have the meaning as defined and set out in Section 42 of the Internal Revenue Code of 1986, as amended (“Code”) unless otherwise provided herein.

**Notification letter with required information submitted to IHFA**

The owner of the development requesting that the Indiana Housing Finance Authority (IHFA) find a Qualified Contract purchaser for the applicable development must submit a notification letter (“Letter”) with the IHFA stating this interest. The Letter must be accompanied by the following required information:

1. A fully completed calculation of the Qualified Contract price, including completed Worksheets A – E and a detailed list of all assumptions utilized to calculate the Qualified Contract price. The assumptions used must be consistent with those included in these Policies. A certified public accountant, on behalf of the development, must complete, review and approve the calculation.
2. A thorough narrative description of the development, including a description of all amenities suitable for acquainting prospective purchasers with the development.
3. A detailed set of color photographs (digital and hard copy) of the development, including photographs of the interior and exterior of representative apartment units and buildings, and photographs of the development grounds (no photocopies).
4. A description of all restrictions applicable to the development and its operation.
5. A statement of income and expenses of the development for the three (3) years prior to the submission of the Letter and a statement of income and expenses of the development for the year to date of the submission of the Letter. The statements must fairly apprise a potential purchaser of the development’s operating expenses, debt service, gross receipts, net cash flow and debt service coverage ratio.
6. A current and certified rent roll.
7. Occupancy history for the three (3) years prior to the submission of the Letter.
8. Any third party environmental reports.

9. A property condition report and property needs assessment.
10. Copies of the leases for the leased portions of the land or improvements.

The Letter and required information must be submitted before the expiration date of the initial Compliance Period. IHFA will have one (1) year from the receipt of the Letter and required information to find a qualified purchaser for the development, unless the owner agrees to a longer time period. All buildings within the development must qualify before IHFA will accept a Qualified Contract provision request. A development may make only one (1) request for a Qualified Contract purchaser, and the request must be made before the expiration date of the initial Compliance Period.

### **Certified Public Accountant Review**

To help assess the credibility of the assumptions used in calculating the Qualified Contract price, the IHFA will contract with a reputable independent certified public accountant to review the Qualified Contract price calculated by the development's certified public accountant. The development will be notified of any adjustments in the Qualified Contract price suggested or required following the IHFA review.

### **Property listed with multi-family broker**

IHFA will contract with a reputable multi-family housing broker to appraise, and list and market all Section 42 properties that have requested to utilize the Qualified Contract provisions and submitted all required information. In addition, the development must agree to list the property with the multi-family housing broker selected by IHFA. The listing price of the property will be the calculated Qualified Contract price. The final sales price will be the amount agreed upon by the parties. Properties that do not close after a purchaser has been found who will pay the calculated Qualified Contract price will be considered by IHFA to have forfeited their right to utilize the Qualified Contract provisions of Section 42 for that development.

### **Fees and cost**

Property owners agree to pay costs incurred for review of the submitted information and all commissions and fees owed to the multi-family housing brokers for services rendered. All other costs associated with the submittal of the Qualified Contract request are separate and must be paid by the property owner. IHFA anticipates a Qualified Contract submittal fee of twenty-five dollars (\$25) per unit. This fee does not include the costs of certified public accountant review and the cost of third party appraisal.

### **Qualified Contract Price Calculation and Assumptions**

All calculations must follow the Code. All assumptions utilized must be, in the sole and absolute discretion of the IHFA, reasonable and customary. The following assumptions

must be used when calculating the Qualified Contract Price using Worksheets A through E.

Worksheet B – Adjusted Investor Equity: May be included only if included in adjusted basis of the development and required by the partnership agreement. \*(either or)

Worksheet D – Cash Distributions: For the purpose of these calculations, cash distributions include: Developer fees, Construction or Contractor fees, Asset manager fees, and any refinance proceeds from the inception through the initial 15-years of participation in the Section 42 Programs

### **Indemnification**

Property owner agrees that the actions, determinations, decisions, or other rulings made by the IHFA pursuant to this policy shall not be construed to be a representation or warranty by the IHFA as to a development's compliance with applicable legal requirements, the feasibility or viability of any development, or any other matter. No action of the IHFA shall be relied upon by any person as a representation or warranty by the IHFA in connection therewith.

IHFA reserves the right to resolve all conflicts, inconsistencies or ambiguities in these Policies, including those which may rise in administering, operating or managing the Qualified Contract Policies. The IHFA in its sole discretion reserves the right to, and from time to time may, amend these Policies pursuant to the Code.

## **Qualified Contract Request Acknowledgements**

The undersigned hereby acknowledges that:

1. The guidelines for the Rental Housing Tax Credit Qualified Contract provisions provided by IHFA to development owners, including sections herein regarding Qualified Contract price determinations, are provided only for the convenience of IHFA in reviewing the requests. Completion of the guidelines in no way guarantees eligibility for the Qualified Contract provision with the IHFA or ensures that the Qualified Contract price has been computed in accordance with the Internal Revenue Code (IRC) requirements. Any notations herein describing IRC requirements are offered only as general guides and not as legal authority;
2. For purposes of reviewing the submission, IHFA is entitled to rely upon the representation of the undersigned as to all of the calculations regarding the determination of the Qualified Contract price of the development. Acceptance into the Qualified Contract process based upon such representations in no way imposes responsibility on the IHFA for their correctness or compliance with IRC requirements.
3. IHFA offers no advice, opinion or guarantee that the owner will qualify for the Qualified Contract process.
4. The submission requirements for the Qualified Contract process and the terms of such process are subject to change at any time by federal or state law, by federal, state or IHFA regulations, or by other binding authority.
5. Owner represents and warrants to the IHFA that it has the necessary authority to execute this submission on behalf of itself and the Development and to engage in all acts necessary to consummate this submission. Owner further represents and warrants to IHFA that the signatories hereof have been duly authorized, and this submission shall be a valid and binding act of the owner, and the submission shall be enforceable according to its terms.
6. Owner represents and warrants to IHFA that it will take any and all action necessary to ratify, confirm, and comply with the terms and conditions of this submission.
7. By submitting a request for the qualified contract provision, owner agrees to sell the development for the Qualified Contract price or an amount agreed upon by the parties involved as part of this process.

Further, the undersigned hereby certifies that:

- a. All factual information provided herein or in connection herewith is true, correct and complete, and all estimates are reasonable;

### **Qualified Contract Request Acknowledgements**

- b. It shall promptly notify IHFA of any corrections or changes to the information submitted to IHFA in connection with this request upon knowledge of same;
- c. It will at all times indemnify and hold harmless IHFA against claims, losses, costs, damages, expenses and liabilities of any nature (including, but not limited to, attorney fees to enforce the indemnity rights herein) directly or indirectly resulting from, arising out of, or relating to IHFA's acceptance, consideration, approval or disapproval of this application;
- d. Owner hereby authorizes IHFA and its successors, affiliates, agents and assigns to utilize any photograph, picture, or other medium (collectively "photographs") of the property covered by this submission, without limitation, in any and all matters, publications, or endeavors, commercial or noncommercial, undertaken directly or indirectly by IHFA at any time on or after the date of this submission. Owner understands the following: (1) it is relinquishing any and all ownership rights in any such photograph, picture or medium to IHFA; and (2) it is relinquishing any and all legal rights that it may presently or hereafter have, directly or indirectly, to challenge, question or otherwise terminate the use of the photographs by IHFA;
- e. **DISSEMINATION OF INFORMATION and AGREEMENT TO RELEASE AND INDEMNIFY.** The undersigned for and on behalf of itself, the development, Owner, and all participants in the development, together with their respective officers, directors, shareholders, members, partners, agents, representatives, and affiliates understands, acknowledges and agrees that this Notification Letter for Rental Housing Tax Credits Qualified Contract are available for dissemination and publication to the general public.

As additional consideration for IHFA's review of its request for Credits, the Owner does hereby release IHFA and its directors, employees, attorneys, agents, and representatives of and from any and all liability, expense (including reasonable attorney fees) and damage that it may, directly or indirectly, incur due to such dissemination or publication. Owner hereby agrees to hold harmless IHFA of and from any and all such liability, expense or damage.

## Qualified Contract Request Acknowledgements

### ACKNOWLEDGMENT OF OWNER

IN WITNESS WHEREOF, the undersigned, being duly authorized, has caused this document to be executed in its name on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

#### **OWNER**

\_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

STATE OF INDIANA       )  
  )SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, [the \_\_\_\_\_ of \_\_\_\_\_ ("Owner")] and, being duly sworn, acknowledged the execution of the foregoing agreement was his or her voluntary act and deed [on behalf of Owner], and stated that any representations contained therein were true and correct.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

County of Residence:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Printed Name